IN THE MATTER OF ARBITRATION BETWEEN

WASHOE COUNTY, **PUBLIC EMPLOYER,** **AND** **WASHOE COUNTY DEPUTY SHERIFFS ASSOCIATION** **EMPLOYEE ORGANIZATION,** **AND** **WASHOE COUNTY SUPERVISORY DEPUTY SHERIFF'S ASSOCIATION** **EMPLOYEE ORGANIZATION**	**INTEREST ARBITRATION AWARD** **RONALD HOH, ARBITRATOR**

APPEARANCES

For Washoe County:

David Watts-Vial, Assistant District Attorney

For the Associations:

Rockne Lucia, Attorney

AUTHORITY

This proceeding arises pursuant to the provisions of Nevada Revised Statutes (hereinafter NRS) Section 288 concerning "Relations Between Governments and Public Employees," and specifically under NRS Section 288.215, which addresses "Submission of Disputes Between Firefighters and Police Officers and Local Government Employers to Arbitration." Washoe County (hereinafter County) has been unable to agree upon the terms of new collective bargaining agreements with either the Washoe County Deputy Sheriffs Association (DSA) for non-supervisory

County deputy sheriffs, or the Washoe County Supervisory Deputy Sheriffs Association (SDSA) for supervisory, non-managerial deputy sheriffs for the two fiscal years 2012 and 2013 (July 1, 2011 through June 30, 2013), through their negotiations and mediation. DSA and SDSA shall be collectively referred to herein as "the Associations," and the Washoe County Sheriffs Department shall be referred to herein as "the Department."

In accordance with NRS Section 288.200, the parties mutually selected the undersigned arbitrator Ronald Hoh to hold hearings and render a binding decision on both of these cases concerning the outstanding issue(s) between the County and both Associations. Pursuant to the agreement of the parties, the hearing was held before the arbitrator on May 29 and 30, and June 14 and 15, 2012 in Reno, Nevada, and was completed late on the June 15 date. At the hearing, all parties were afforded th opportunity to examine and cross-examine witnesses, and to submit evidence and argument in support of their respective positions. Upon completion of the evidence submitted at the hearing, the parties agreed to file written post-hearing briefs, and short reply briefs addressing elements raised in the initial briefs. The last of those briefs was received by the arbitrator on September 1, 2012 and this matter was deemed fully submitted by the arbitrator as of that date.

RELEVANT NEVADA REVISED STATUTES PROVISIONS

NRS SECTION 288.215 Submission of dispute between firefighters or police officers and local government employer to arbitrator; hearing; determination of financial ability of local government employer; negotiations and final offer; effect of decision of arbitrator; content of decision.

1. As used in this section:

(a) "Firefighters" means those persons who are salaried employees of a fire prevention or suppression unit organized by a political subdivision of the State and whose principal duties are controlling and extinguishing fires.

(b) "Police officers" means those persons who are salaried employees of a police department or other law enforcement agency organized by a political subdivision of the State and whose principal duties are to enforce the law.

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4. The arbitrator shall, within 10 days after the arbitrator is selected, and after 7 days' written notice is given to the parties, hold a hearing to receive information concerning the dispute. The hearing must be held in the county in which the local government employer is located, and the arbitrator shall arrange for a full and complete record of the hearings.

5. At the hearing, or at any subsequent time to which the hearing may be adjourned, information may be presented by:

(a) The parties to the dispute; or
(b) Any interested person.

6. The parties to the dispute shall each pay one-half of the costs incurred by the arbitrator.

7. A determination of the financial ability of a local government employer must be based on:

(a) All existing available revenues as established by the local government employer and within the limitations set forth in NRS 354.6241, with due regard for the obligation of the local government employer to provide facilities and services guaranteeing health, welfare and safety of the people residing within the political subdivision.

(b) Consideration of funding for the current year being negotiated. If the parties mutually agree to arbitrate a multi-year contract, the arbitrator must consider the ability to pay over the life of the contract being negotiated or arbitrated. Once the arbitrator has determined in accordance with this subsection that there is a current financial ability to grant monetary benefits, the arbitrator shall consider, to the extent appropriate, compensation of other governmental employees, both in and out of this State.

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9. If the parties do not enter into negotiation or do not agree within 30 days, each of the parties shall submit a single written statement containing its final offer for each of the unresolved issues.

10. The arbitrator shall, within 10 days after the final offers are submitted, accept one of the written statements, on the basis of the criteria provided in NRS 288.200, and shall report the decision to the parties. The decision of the arbitrator is final and binding on the parties. Any award of the arbitrator is retroactive to the expiration date of the last contract.

11. The decision of the arbitrator must include a statement:

(a) Giving the arbitrator's reason for accepting the final offer that is the basis of the arbitrator's award; and
(b) Specifying the arbitrator's estimate of the total cost of the award.

NRS SECTION 288.200 - CRITERIA FOR RECOMMENDATIONS AND AWARDS

7. Except as otherwise provided in subsection 10, any fact finder, whether the fact finder's recommendations are to be binding or not, shall base such recommendations or award on the following criteria:

(a) A preliminary determination must be made as to the financial ability of the local government employer based on all existing available revenues as established by the local government employer and within the limitations set forth in NRS 354.6241, with due regard for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare, and safety of the people residing within the political subdivision.

(b) Once the fact finder has determined in accordance with paragraph (a) that there is a current financial ability to grant monetary benefits, and subject to the provisions of paragraph (c), the fact finder shall consider, to the extent appropriate, compensation of other government employees, both in and out of the State and use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute, and the fact finder shall consider whether the Board found that either party had bargained in bad faith.

(c) A consideration of funding for the current year being negotiated. If the parties mutually agree to arbitrate a multi-year contract, the fact finder must consider the ability to pay over the life of the contract being negotiated or arbitrated. The fact finder's report must contain the facts upon which the fact finder based the fact finder's determination of financial ability to grant monetary benefits and the fact finder's recommendations or award.

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10. Any sum of money which is maintained in a fund whose balance is required by law to be:

(a) Used only for a specific purpose other than the payment of compensation to the bargaining unit affected;

(b) Carried forward to the succeeding fiscal year in any designated amount, to the extent of that amount, must not be counted in determining the financial ability of a local government employer and must not be used to pay any monetary benefits recommend or awarded by the fact finder.

NRS 354.6241 - CONTENTS OF STATEMENT TO AUDITOR; EXPENDITURE OF EXCESS RESERVES IN CERTAIN FUNDS

1. The statement required by paragraph (a) of subsection 5 of NRS 354.624 must indicate for each fund set forth in that paragraph:

(a) Whether the fund is being used in accordance with the provisions of this chapter.

(b) Whether the fund is being administered in accordance with generally accepted accounting procedures.

(c) Whether the reserve in the fund is limited to an amount that is reasonable and necessary to carry out the purposes of the fund.

(d) The sources of revenues available for the fund during the fiscal year and transfers from any other funds.

(e) The statutory and regulatory requirements applicable to the fund.

(f) The balance and retained earnings of the fund.

2. Except as otherwise provided in NRS 354.59891, to the extent that the reserve in any fund set forth in paragraph (a) of subsection 5 of NRS 354.624 exceeds the amount that is reasonable and necessary to carry out the purposes for which the fund was created, the reserve may be expended by the local government pursuant to the provisions of chapter 288 of NRS.

THE PARTIES' STIPULATIONS

The parties at the hearing reached the following stipulations pertinent to the arbitrator's decision in this case:

1. The County asserts the position of "inability to pay" relative to the economic proposals submitted in these proceedings by the Associations.

2. The Associations' collective bargaining agreements expired on June 30, 2011 and the parties have attempted to negotiate successor agreements. Throughout the negotiations, the parties have acted in good faith and are not asserting allegations of bad faith or improper bargaining against the other.

3. The parties have exhausted the impasse procedures mandated by Nevada Revised Statutes.

4. The Arbitrator has statutory authority to issue a final and binding award in these proceedings.

5. The Arbitrator shall select either the County or the Association's "last, best, and final offer" on a "total package" basis.

The parties further agreed at the hearing to waive the ten-day time limit for the arbitrator's decision in this case set forth in NRS Section 288.215(10), and agreed that there is no statutory time limit for issuance of the decision by the arbitrator in this case.

BACKGROUND

The Department provides comprehensive law enforcement services for the entirety of the County, which covers all of northwest Nevada, in an area of about 6,700 square miles, and stretching geographically from the California border on the west to the Oregon/Idaho border more than two hundred miles to the north, and areas about twenty-five miles south and about thirty miles southeast of Reno and Sparks, Nevada – the two largest cities within its jurisdiction. It includes both law enforcement patrol services for the entirety of the County except for the cities of Reno and Sparks, and detention services via the only jail in the County, which serves twenty-two federal, state, and local law enforcement jurisdictions including Reno and Sparks, and normally houses between 1100 and 1200 inmates. The Department is the second largest law enforcement jurisdiction in Nevada behind Las Vegas Metro, and employs about 770 persons, including about 414 sworn employees and about 360 civilian employees, the latter of whom are not involved in this case.

DSA represents approximately 351 non-supervisory deputy sheriffs performing patrol and detention (hereinafter detention or Jail) services. SDSA represents sixty-three supervisory employees in three ranks, including five captains, 15 lieutenants and forty-three sergeants. There

are approximately eighty-one deputies and supervisors serving in the patrol function, with the remainder of such sworn employees serving in the detention area. The Reno-Sparks metropolitan area contains about 430,000 residents.

The parties began negotiating for the fiscal years 2012 and 2013 contracts in May, 2011, with bargaining sessions occurring simultaneously between the County and both Associations. During the approximately eight bargaining sessions occurring between May and October 2011, the vast majority of the discussions concerned the County's financial position and, at least from the County's perspective, how the Associations could meet the County's budgetary concerns by accepting wage and/or benefit concessions. When the Associations did not accept the County's wage concessions demand by May 2011, the County declared impasse. The parties subsequently met with a mutually agreed-upon mediator shortly thereafter, but made no progress in that session toward contractual agreement. The parties subsequently mutually agreed to proceed to interest arbitration before the undersigned arbitrator in January, 2012.

Initially in this proceeding, the parties presented final offers to the arbitrator in the areas of wages and a SDSA proposal concerning holiday pay in certain circumstances for SDSA employees. The Associations subsequently withdrew from the arbitrator's consideration the holiday pay proposal. The parties agreed that wages was the only impasse item before the arbitrator, and that all other contractual matters were resolved or unchanged in the contract.

THE PARTIES' FINAL OFFERS

The time period covered by this case and arbitration award is fiscal years 2012 (July 1, 2011–June 30, 2012) and 2013 (July 1, 2012–June 30, 2013). The parties agreed that, for fiscal year 2012, there shall be no change to the previous contract between them which covered the two prior fiscal years, in any economic or non-economic area.

The final offer of both Associations' under NRS Section 288.215(9) consists of a general wage increase of 3.125% across the board retroactive to the beginning of the 2013 fiscal year – July 1, 2012 – and no other changes to the prior contract. The total cost of the proposal of the Associations is approximately $1,285,244.

The County's final offer under that statutory subsection is that the base wages of employees in both Associations be decreased by 3.4% beginning July 1, 2012 and "sunsetting" on June 30, 2013. The decrease value of the County's proposal on existing bargaining unit wage costs is $1,349,243 less than the current amounts spent on the wages of Association- represented employees.

ABILITY TO PAY

The major issue between the parties, and the issue which under NRS Section 288.215(7)(a) the arbitrator is required to first address and make a "preliminary determination" on, is ability to pay. Under the statutory language, that "ability to pay" is described as "...the financial ability of the local government employer based on all existing revenues..." with certain limitations set forth subsequently in that statutory subsection. In summary, the County asserts that it does not have the ability to pay the final offer of the Associations, while the Associations argue that the County does have such an ability to pay for that final offer.

POSITIONS OF THE PARTIES CONCERNING ABILITY TO PAY

THE COUNTY

The County makes the following arguments in support of its contention that it does not have the ability to pay or fund the final offer of the Associations in these circumstances, and that adoption of the Associations' final offer would be contrary to the statutory requirement that the arbitrator provide "...due regard to the obligation of the (County) to provide facilities and services

guaranteeing the health, welfare and safety of the people residing in the (County)."

1. The starting point for analysis concerning ability to pay is NRS 288.215(7), which requires the arbitrator in these circumstances to determine the County's financial ability based upon review of all existing "available revenues" while taking "due regard" for the obligation of the local government employer to provide facilities and services "guaranteeing the health, welfare and safety of the people residing within the political subdivision."

2. NRS Section 288.200(10) excludes from the analysis of ability to pay "any sum of money which is maintained in a fund whose balance is required by law to be: (a) used only for a specific purpose other than the payment of compensation to the bargaining unit affected; or (b) carried forward to the succeeding fiscal year in any designated amount, to the extent of that amount." Additionally, NRS Section 354.6113 excludes from "available revenues" any monies appropriated in capital funds, while NRS Section 354.6115 disallows consideration of stabilization fund monies, for the purposes of ability to pay. Finally, Nevada Administrative Code Section 354.660 provides that a budgeted ending funding balance of not more than 8.3% of the total budgeted expenditures, less capital outlay, for a general or special revenue fund which receives revenue from property taxes, is not subject to negotiations.

3. As to the requirement that the arbitrator give "due regard for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision," it is apparent from the term "due regard" that the Nevada Legislature intended for the arbitrator to provide some level of deference to the budgetary decisions of the Board of County Commissioners. Nevada case decisions and statutory analysis establish that the Board of County Commissions has broad discretion in approving and setting budgets, and determining budget priorities. While the exact point at which the Board of County Commissioners will be deemed to have abused its discretion is unknown, what

is clear is that the Board's discretion is at its zenith during times of financial distress.

4. Even assuming that the arbitrator were to find that the County has the ability to pay, an arbitrator must still consider the effect of wage and benefit increases upon the loss of public service to the community. Arbitrators have previously found that the granting a wage increase given the poor financial status of the employer actually would be counter to the workers' interests by placing their jobs in jeopardy. Arbitrators therefore also evaluate the impact of any pay raises for the employees involved in the dispute before him/her on other employees or other services to the public.

5. The testimony of County witnesses Sherman and Mendez showed the recent economic history of the County, the past efforts taken by the County to balance its budgets, and the current efforts to balance the fiscal year 2012-13 budget. It is clear from that testimony that the County has evaluated its financial position and has set reasonable priorities in the budget. It is also clear that the County does not have the ability to pay the raises requested, and must receive the wage concessions it seeks. Among other elements supporting that inability to pay, the evidence in this area showed that: 1) housing prices have dropped more than half since 2005 and 61% of County homes are now "underwater," which creates downward pressure on home values and resulting tax revenues; 2) property tax revenues are down and are becoming a more significant stream of revenue than in the past because consolidated taxes also have been down significantly; 3) property taxes are forecast to continue decreasing due to the cap that was placed on assessed values by the Nevada Legislature in 2005, which is of concern because for every 1% decrease in property tax revenues, consolidated taxes must rise 2% to make up the difference; 4) unemployment rates have more than doubled from nearly five to 13% percent since 2008 and now stand at 12.7%, and the number of full-time County employees has decreased 27% from 8.1 to 5.8 employees per thousand population during that same period; and 5) other pressures on the County

budget include the cost of post-employment benefits, decreased funding for this cost which continues to grow over time, and the cost of covering "heart/lung compensation," a benefit required by the Nevada Legislature solely for police and firefighters, which costs about $1 million dollars per claim, and for which the County has not funded at this time because of the economic crisis it faces.

6. Wages and benefits make up 77% of the fiscal year 2013-13 budget and are being funded at the expense of investment in capital infrastructure, technology infrastructure, culture and recreation funding, and decreased ending fund balances, all of which led the County to seek concessions from all of its labor organizations including those represented by the Associations. Public safety remains the highest priority and has actually risen from 36% of general fund costs in 2006-07 to a current 41% level.

7. In September 2011, the projected budgetary shortfall for fiscal 2011-12 was $16.8 million, a shortfall which was subsequently balanced by using a salary sweep and decreased OPEB contributions, accrued benefits and contingency funding, rather than layoffs. In addition, the County decreased services to the public when 140 positions went unfilled for a savings of $5.5 million, and additionally met the shortfall by getting significant wage concessions from other County labor organizations. Had those wage concessions not been received, the ending fund balance for fiscal year 2011-12 would have been below the requirements of Nevada law.

8. The evidence further shows that the fiscal year 2012-13 budget was balanced by making "hard choices" including a decrease in Department budgets by $6.3 million, again reducing OPEB funding by $3.3 million, decreasing capital and contingency funding by $3.5 million, and further reducing the fund balance by $4.6 million. The fiscal year 2012-13 budget shows an ending fund balance of 9.03% for fiscal year 2011-12 and 8% for fiscal year 2012-13.

9. Concessions are needed from employees represented by the Associations because the cuts described above are simply unsustainable, while the Associations' proposal will cost $1.24

million – the equivalent of thirteen more Department positions. An Award of the Associations' final offer would require further cost cutting measures including possible further deceases to OPEB funding, capital improvements and layoffs. On the other hand, an award in favor of the County would result in the savings to the County of about $1.35 million.

10. While County witnesses testified at great length to all aspects of the budget including prioritization and setting spending policies that will hopefully assure stability into the future and assure that the County fulfills its duty to provide facilities and services required under NRS Section 288.200(10), the Associations' financial expert Ms. Kohn testified solely as to the County's financial condition. She never offered up an opinion as to whether the County's budget policies and spending priorities were incorrect, unwise or misguided. It appears that Ms. Kohn's sole duty was to comb through the County's budget to find monies which in her opinion "were available to provide raises sought by the Associations," regardless or in spite of whatever deleterious effects those raises may have on the County's duties to its citizenry.

11. Ms. Kohn's analysis is riddled with legal conclusions which are demonstrably incorrect and which are fatal to her analysis of the County's budgets for both of the years involved here. She, among other things, incorrectly defined the term "revenue," and improperly claimed that the County is able to access monies for wage increases from both capital projects funds and stabilizations funds. She additionally failed to review consolidated tax revenues on a long-term basis, failed to take into account the concomitant decline in property taxes as well as lower projected fee revenues contained in the County's budgetary Estimate to Complete, failed to account for such capital funding currently being at unsustainable levels, and did not show that the County historically overbudgets its expenditures as she claimed. She additionally contended that in certain funds there was a $1.9 million and a $961,000 profit, where in fact those amounts were both losses projected by the County.

12. In addition to the numerous analytical and legal areas cited above, Ms. Kohn engaged in questionable accounting and analysis when she excluded depreciation from her analysis of the County's reserves in the Equipment Services Fund. County witnesses testified that Kohn's conclusion that there was $4 million in reserves in this fund was therefore incorrect, and stated that Ms. Kohn could not ascertain the true number without including depreciation.

13. Based upon the errors permeating Ms. Kohn's analysis, paired with the deference which must be paid to the County's budgeting decisions, and the failure of the Associations' other experts to show the impropriety of the budgetary process or the County's calculations, it is clear that the County's proposal must be accepted. There is no basis for a finding that the County has the ability to pay the wage increases requested by the Associations. In addition, the substance of the Associations' proposals risk a double recovery by those employees of an additional 3.125% – the amount for which the Associations' are suing the County – for a total of $2.5 million in wage increases, which will only increase the County's fiscal woes and come at the expense of the vast majority of the remaining County employees.

14. In the Associations' reply brief, the Associations failed to provide a basis for disregarding the well founded decisions of the Board of County Commissioners in the formulation of its budgets during the most trying economic times in recent history. The numerous legal and accounting deficiencies contained in Ms. Kohn's testimony not only included her lack of understanding with regard to legal limitations and her incorrect definition of "revenue," but also she failed to follow basic accounting practices including the failure to include depreciation in the estimation of revenues in the Equipment Services Fund and relying on unadjusted figures in her analysis and testimony. Those failures and discrepancies cannot be understated and pervade the entirety of her analysis. In short, no evidence was provided to demonstrate that the actions of the Board of County Commissions were anything other than well founded considerations of the health,

welfare and safety of the entire County.

15. While the Associations in the reply brief asserted that sustainability is not a factor to be considered, they noticeably failed to cite any authority for such a proposition, and logic and the statutory language dictate that sustainability must be a factor. Clearly the County is required as part of its duty to "guarantee" the provision of facilities and services for the health, welfare and safety of all of its citizens to adequately fund the investment in infrastructures; and to provide sufficient materials, tools and staff in order to sustainably meet those elements. The Associations' reading of these statutory provisions amounts to an assertion that the County should never look at sustainabilty, should never look at the future, and should only fund the immediate demands of the Associations. The absurdity of that position is clear.

16. The County provided evidence that public safety has been accorded a high priority, as evidenced by the fact that fourteen more Department deputies are being hired, crime rates in the County have actually decreased – which demonstrates that the County is not at additional risk; the rate of turnover for sworn employees in the Department is less than in the County generally, and very few Department employees are leaving the employ of the County for other agencies. Additionally, the Association's proposals are unreasonable and risk a double recovery of an additional 3.125%, which will come at the expense of the vast majority of other County employees who took wage concessions. For these reasons, the County's proposals must be accepted.

THE ASSOCIATIONS

The Associations make the following arguments in support of their contentions both that the County has the ability to pay the cost of the Associations' proposals, and that if awarded, the final offer of the Associations will satisfy the NRS Section 288.215 requirement of giving "due regard for guaranteeing the health, welfare and safety of the citizens of the (County)."

1. The Associations' proposals tendered to the County during negotiations were intended primarily to make the Associations' members whole for the 2009 and 2011 compensation reductions which those employees had suffered based upon the County's belief that those employees were obligated to pay a portion of the public employee retirement system costs for their pensions. The goal of the Associations' proposal here is to return the wages of bargaining unit employees to where they were two years ago before such deductions were made by the County.

2. During those negotiations, despite the protestations and asserted positions taken by the County in these arbitration proceedings, the County established the precedent that it could unilaterally reallocate budgeted funds from the OPEB retirement health cost trust to wage payments for purposes of reducing the amount of proposed wage concessions that the County had previously been demanding. The County asserts in this arbitration that it cannot transfer funds from the OPEB trust and that the award from the arbitrator in favor of the Associations would put the County's finances at risk. The County cannot have it both ways. Either the County can use the OPEB trust dollars at its discretion and under circumstances it deems appropriate, or it cannot. Clearly, the evidence shows that bargaining history supports an award in favor of the Associations on this subject.

3. With regard specifically to the issue of ability to pay, the County has sufficient revenues and resources to satisfy NRS Section 288.215 and pay the costs of the Associations' final offer. The Associations have demonstrated that there are multiple sources of revenue and resources to satisfy that ability to pay criterion. The evidence shows that there are sufficient revenues from budget surpluses from the prior fiscal year (2011-12), projected revenues from the current fiscal year (fiscal 2012-13), excess funds from internal service revenues, and anticipated revenue from the State of Nevada; and that the County retains the ability to generate additional tax revenues.

4. The County finds itself in the fortunate position of having estimated revenues exceed expenditures for fiscal year 2011-12 and 2012-13. Not only are the budgets balanced, but the fiscal year 2012-13 budget was balanced without the utilization of reserves or additional wage concessions from County employee bargaining units. Budgets and anticipated positive fund balances for the current and prior fiscal years are determinative on the issue of available revenues and resources under NRS Section 288.215, since the arbitrator is required to look at the cost analysis for the two year term of this contract.

5. The projections for fiscal year 2012-13 – the current fiscal year – are positive in identifying ample sources to pay the Associations' final offer out of the general fund balances. The evidence shows that the County has additional consolidated tax revenues which as of March 2012 show an increase of 4.2% over the previous year. Moreover, County documents demonstrate that the unemployment rate for April 2012 was down 1.7% from the previous year; the taxable sales were 3% higher over March of 2011, Assembly Bill 204 revenues were $8.4 million or 1.9% higher than the budgeted amount of $8.2 million, and Consolidated Tax revenues are projected for an increase of $1.6 million more than the anticipated budgeted amount. These funds represent excess funds that are available over and above the budget forecast, and coincidentally this significant increase in Consolidated Tax revenue represents the approximate cost of the Associations' proposal.

6. The evidence further shows that Consolidated Tax revenue estimates by the County have been trending higher than originally anticipated, and that the County knew that Consolidated Taxes were trending higher for year end fiscal 2012 but yet underestimated the revenues in that area by approximately $1.6 million. Despite County contentions to the contrary at the hearing, the $1.6 million in additional revenues will flow into the general fund for the fiscal 2012-13 budget and be available for payment of the Associations' proposal.

7. By the County's own estimates, there will be a total of $2.5 million excess generated from Consolidated Taxes over the amounts contained in the budget. These estimates for both fiscal years 2011-12 and 2012-13 are derived from County figures, and the Associations' budget expert Kohn stated that the proposal by the Associations will be covered by the increase Consolidated Tax revenues. Based upon that reality, there is no need to rely upon estimated personnel vacancies or additional funds or reserves to meet the Associations' final offer.

8. In an acknowledgment of the County's enhanced and improved financial condition, County Manager Simon sent an e-mail to County employees on May 18, 2012 announcing that the County appears to have turned the corner; the budget for 2012-13 was balanced with no use of reserves; and the budget was balanced without any additional County bargaining unit wage concessions, in part due to the elimination of 51 County positions that are currently vacant. Any attempt by County witnesses in this arbitration to suggest that the County was not in a healthy financial position relative to increased revenues was directly contradicting the person most responsible for the management of the entire County – the County Manager.

9. The County Manager Simon e-mail also referenced the fact that the County had sufficient funds to transfer about $19 million into the long-term liability fund for retiree health benefits. The evidence shows that very few local governments are currently in a position to actually fund future OPEB liability. The significance of this allocation of nearly $19 million out of the general fund cannot be overstated, inasmuch as there is no legal requirement to fund the retiree health care trust; rather, there is simply a requirement to post it on the County's books. Simon's e-mail additionally announced that the County had the highest bond rating in the history of Northern Nevada and that the budget requires no layoffs through 2013. Additionally, Simon announced that the ending fund balance was 200% of what was required by statute, that the County expects to receive $6 million over two years from the State of Nevada to go toward limiting health insurance

premium increases and possibly hiring additional deputies, and that the County has "fully funded the Incline Village tax refunds and still maintains millions of dollars in the assigned reserve for risk management." Such evidence is clear indication of the County's ability to pay the Associations' proposal.

10. The evidence further shows that the County budgeted approximately $29 million as the end fund balance, then carried over $35 million as their actual opening fund balance for fiscal 2012-13. Revenues realized by the County in excess of those budgeted are an available resource for wage increase under the statute. The County additionally created another available resource by underestimating revenues and the resulting positive fund balances. For example, the vacant employee positions that are carried over from one fiscal year to the next represents positions (and funds) that will ultimately result in available resources, since only a portion of those positions will be defunded and permanent eliminated from the budget.

11. County ending fund balances far exceed the statutory minimums and are available to pay the Associations' proposal. Nevada law requires only a minimum ending budget fund balance of 4%. The ending fund balance estimate for fiscal year 2012-13 of over $35 represents a 12.1% ending fund balance – well beyond the statutorily required 4%.

12. The County attempted to blur the distinction between unassigned and assigned balances in an attempt to conceal available funds and make it appear as if there were insufficient funds to pay for the Associations' proposal. County Budget Director Mendez also testified that as long as expenditures exceed revenues, the County does not have the ability to pay. There is no authority cited for this interpretation. The County's flawed reasoning is apparent when the County includes future contingent liabilities in its calculus of ability to pay such as depreciation on County assets, OPEB obligations, and future vacant positions. If one accepts Ms. Mendez' and the County's definition of ability to pay as a situation only where revenues exceed expenditures, the

determination of ability to pay falls under the complete control of the County, since the County simply needs to "budget" for any contingent liabilities in any amount it deems appropriate and eliminate the funds from NRS Section 288.215 analysis. In these circumstances, if the County's position is validated by the arbitrator, the County will never have the ability to pay due to its own internal (rather than legal) fund characterizations. Similarly, Mendez refused to consider the inclusion of ending fund balances as a part of the equation and criteria set forth in NRS Section 288.215(7). Again this logic has no legal authority, and is further evidence that the County wishes to exercise complete control over any resources or funds that would otherwise be available for an analysis of the ability to pay under NRS Section 288.215.

13. Both Mendez and former Budget Director Sherman focused on the claimed "unsustainable level of funding" for various items in the County budget, in an attempt to support the County's position of inability to pay. Nowhere in NRS Section 288.215 is there any reference or mention of the terms "sustainable" or "sustainability." It is clear that such terms are not included in the statutes, because they are subject to abusive interpretation by an employer and would render NRS Section 288.215 completely meaningless in the area of ability to pay.

14. The County has underestimated budget revenue projections and overstated expenditures and projected deficits. The net result of such underestimation and overestimation is that despite the representation of the County that the public safety function is running over budget by nearly a $1 million, the actual amount is about $550,000. These figures from the County's exhibits indicate that the County is consistently trying to inflate budgeted numbers to reflect a negative position. The overstating of expenses and the under representation of revenues simply provides the County with the ability to paint a picture of inability to pay insuring that, at least on paper, there will be no funds available for analysis under NRS Section 288.215.

15. Various funds within the County budget are available to pay the Associations' proposals. Those funds include the Capital Improvement Fund for which, while the County asserts that Capital Improvement Funds need to be replenished, Mendez candidly admitted that the County's capital asset value is approximately a one-half billion dollars. It is also interesting to note that the County maintains a current balance of $51 million dollars in the Capital Improvement Fund. Despite the County's assertion that monies budgeted to the Capital Improvement Fund are unavailable, there are opportunities for the County to utilize such funds within the general budget. The County does in fact possess the ability to transfer funds from the Capital Improvement Fund, and the County has done so for purposes of the construction of a new park, which seems to defy the arguments asserted by the County. That transfer demonstrates unequivocally that the County possesses some ability to transfer dollars from the Capital Improvement Funds, and thus this fund absolutely should be considered as an available revenue source for the Associations' proposals. That fund shows an available amount of $3 million in fiscal 2011-12 and fiscal 2012-13 as a potential source for payment of the Associations' proposals.

16. The evidence further showed that there is approximately $6 million available in the Risk Management Fund as a result of the analysis of three prior years of utilization of that fund. This figure in the County's budget represents County budgeting far in excess of the actual annual average expenditures in such fund. In fact, the fund will have approximately $10.2 million in reserves by the end of the 2012-13 fiscal year. Similarities in underestimated budget amounts also occurred in the Equipment Services Fund.

17. The County has the ability to pay the Associations' proposals through revenue generation. Although the County seems to be forward looking in terms of financial challenges allegedly facing it, it is not interested in taking advantage of potential revenue streams generated by the implementation of a Government Service Tax. The County Commissioners have on several

occasions rejected the option of generating or initiating such a tax. The arbitrator must consider the fact that additional local tax is a source of revenue from which the County has the ability to pay. Commentators and arbitrators have expressed the ability of an arbitrator to direct the public entity to utilize its ability to pursue revenue generation by way of a tax in determining an employer's ability to pay. Although such a tax is probably not necessary in these circumstances, the arbitrator has such authority and the County has the ability to generate revenue f rom the Government Service Tax.

18. An award in favor of the Associations is consistent with NRS Section 354.6241. The relevant elements of that statutory provision state that to the extent that the funds addressed within that provision contain amounts that are "reasonable and necessary to carry out the purposes for which the fund was created," the excess may be expended by the local government employer pursuant to the provisions of NRS Section 288. It is apparent from such statutory language that these funds are also available to the County in funding the Associations' proposal.

19. An award in favor of the Associations will satisfy the NRS Section 288.215 requirement of giving "due regard" to guaranteeing the health, welfare and safety of the citizens of the County. The general welfare and safety of the citizens of the County require the Sheriff to be able to recruit and retain qualified professional personnel – an element which under the Sheriff's testimony he has had extreme difficulty doing given the low wage and benefit amounts paid by the County in comparison to comparable employers. The Sheriff further stated that he did not feel that the wage and benefit package offered to Association-represented employees by the County is conducive to recruiting "qualified, educated, competitive people."

20. NRS Section 288.215 specifically grants the arbitrator the authority to determine wages and benefits if the parties fail to do so, as occurred here. The arbitrator's task would include the responsibility of considering comparable jurisdictions and what they pay their employees not

only in the State of Nevada but outside of it. It is the political indifference expressed by the County concerning the quality of public safety employees that is one of the elements that NRS Section 288.215 designates the arbitrator to guard against. Shortsighted and politically expedient policy decisions concerning the compensation of Department employees in a vacuum and without regard to the labor markets will compromise public safety and the citizens that those County employees are sworn to protect.

21. The arbitrator is clearly put into the position of having to balance the interests of the County, its citizens and the deputies and supervisors of the Department. While the balancing test is difficult and at times uncharted, the County has asked the arbitrator in essence to continue to ravage the wage and compensation package offered to its sworn personnel, ignore established and compelling market evidence, continue to perpetuate its spiraling degradation of the Sheriff's office. The uncontroverted testimony of Sheriff Haley clearly demonstrates that while the County has economic challenges, the Sheriff, the Department and the sworn personnel should not bear a disproportionate burden. The Department must maintain a competitive edge to ensure the public safety of the citizens of the County.

22. It is reply brief, the Associations contend that the County in its initial brief attempts to assert that should the County elected officials through the budgetary process "appropriate" or "budget" funds, those funds/resources become unavailable and outside the reach of the arbitrator pursuant to NRS Section 288.215. Accepting the County's position in this regard would completely negate and render meaningless the literal language of the statute in this area. The nature of interest arbitration requires arbitrators to look beyond the political aspect of budget policies and priorities which dictate control by the employer and bring to the situation an objective perspective as set forth in NRS Section 288.215.

23. With regard to the issue of "due regard for the obligation of local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision," the County in its brief attempts to deviate from the Section 288.215 mandate and assert that the arbitrator must determine whether the Board of County Commissioners' "actions were arbitrary, capricious or lacking in logical or physical foundation or somehow amounting to an abuse of discretion," and that in the absence of such a showing, those decisions must stand and the County has shown an inability to pay. This assertion distorts the NRS Section 288.215 goal of protecting the interest of the citizens of the County. In essence, the County would have the arbitrator simply find that as long as the County Commissioners did not act arbitrarily or capriciously in the budget process, the County must prevail. There is simply no authority or logic for such a position. By any measure, collective bargaining and interest arbitration can never be adjudicated on an analysis of whether the underlying budgetary process was fair, reasonable, arbitrary or capricious. To inject this standard into labor relations would create a burden on the employee organization and third party neutrals that would, in effect, destroy any opportunity for fair and objective resolution by third party neutrals. An affirmation of this standard would upend the structure of arbitration and fact finding. Moreover, the cases cited by the County in support of this contention are clearly factually distinguishable from the circumstances involved here.

24. Contrary to the County's contention in its brief, the evidence via the direct and unequivocal testimony of Sheriff Haley shows what the consequences of adopting the County's wage proposal will be – there will be a devastating impact upon the County's already tenuous ability to recruit and retain qualified individuals. There is no person better suited or qualified to make predictions regarding the impact of arbitral adoption of the respective final offers than is Sheriff Haley.

DISCUSSION OF ABILITY TO PAY

Initially in this case, the arbitrator believes it necessary to outline the statutory provisions of, and those limiting, the issue of ability to pay in these circumstances, and the analysis in those areas by the arbitrator. NRS Section 288.200(7)(a) requires the arbitrator to make "a preliminary determination...as to the financial ability of the local government employer based on all existing available revenues as established by the local government employer and within the limitations set forth in NRS Section 354.6241, with due regard for the obligation of the local government employer to provide for facilities and services guaranteeing the health, welfare and safety of the people within the political subdivision." That "preliminary determination" in these circumstances requires: 1) arbitral consideration of funding for both years of the multi-year contract at issue here under NRS Section 288.200(c); 2) a designation of the "facts upon which the (arbitrator) based (his) determination of the financial ability (or inability) of (the County) to grant monetary benefits" under that same statutory section; 3) that the arbitrator not include within his determination of available resources "any sum of money which is maintained in a fund whose balance is required by law to be: (a) used only for a specific purpose other than the payment of compensation to the bargaining unit affected;" and (b) "carried forward to the succeeding fiscal year in any designated amount, to the extent of that amount." Such funds "...must not be counted in determining the financial ability of a local government employer and must not be used to pay monetary benefits awarded by the (arbitrator)." With regard to these latter exclusions, NRS Section 354.6113 excludes from the arbitrator's jurisdiction any monies appropriated in capital funds, and NRS Section 354.6115 disallows arbitral consideration of stabilization fund monies, because both such funds may only be used for the described designated purposes. Additionally in this area, Nevada Administrative Code Section 354.660 further requires that arbitral discretion is limited to:

A budgeted ending fund balance of not more than 8.3% of the total budgeted expenditures, less capital outlay, for a general or specific revenue fund which receives revenue from property taxes or the Local Government Tax Distribution Account, is not subject to negotiations with other local governments or employee organizations.

Finally in this statutory requirement area, Sections 288.215(7)(b) and 288.200(7)(b) provide that the arbitrator may examine "compensation of other government employees," and Section 288.200(7)(b) also allows examination of "normal criteria in interest disputes...in assessing the reasonableness of "the final offers..." if the arbitrator has (previously) determined "...that there is a current financial ability to grant monetary benefits."

Before moving to the merits of the County's inability to pay claim, the arbitrator believes it necessary to address a dispute that has arisen over the proper interpretation of one of the above statutory provisions. The County argues in this area that, under the NRS Section 288.200(7)(b), the phrase "...with due regard for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision" requires arbitral deference to the budgetary decisions of the Board of County Commissioners, and that, in the absence of a showing by the Associations that those decisions are arbitrary, capricious or lacking in logical or physical foundation or somehow amount to an abuse of discretion, the arbitrator must give deference to the budgetary decisions and priorities set forth by the Board of County Commissioners, and based upon those elements find that the County does not have the ability to pay the wage demand final offer of the Associations.

The arbitrator cannot agree with this County claim, for several reasons. First, it is undisputed in the record that the County has the burden of showing the existence of an inability to pay the demands of the Associations under NRS Section 288.200(7)(c). Since the above factor also exists within the same NRS Section, it is apparent that such a burden also exists on the County to show that the award by the arbitrator at minimum substantially and negatively impacts upon the County's ability "to provide facilities and services guaranteeing the health, welfare and

safety of the people residing in the (County)." The County-claimed "arbitrary, capricious or abuse of discretion" standard cited above improperly shifts the burden in this area to the Associations, in contravention of the County's agreed-upon burden of showing inability to pay and, by extension, any of that phrase's additional statutory elements.

Second, there is no County-cited statutory provisions for that proposition, and the cases and their factual circumstances cited in claimed support of that contention come nowhere near the factual circumstances of the interest arbitration proceeding involved here. Third, NRS Sections 288.200 and 288.215 clearly allow arbitral examination of those budget decisions and priorities, and the County's position in this area would turn interest arbitration into an empty shell under which the arbitrator would have no choice but to rubber stamp those decisions and, at least in these circumstances, find in favor of the County in the ability to pay area without any real examination of whether the County has the ability to finance the Associations' proposals. Put simply, the arbitrator would be abandoning his statutory obligation of determining ability to pay and possibly the proper wage and benefit rate, where as here the parties have failed to do so, if such a standard was adopted. Finally, interest arbitrators have held in the ability to pay area that acceptance of an employer's budget as prepared and presented by the employer without further inquiry into the financial condition of the government entity would reduce interest arbitration to a meaningless process,[1] in that an employer could submit a budget with specific predetermined wage increases or decreases, and that would be the end of the arbitrators' inquiry. Such an abandonment of function is, in my view, contrary to my role as the selected interest arbitrator in this case.

Based upon the above, the arbitrator rejects the County's claim as to the proper meaning to be ascribed to the last three lines of NRS Section 288.200(7)(a) and NRS Section 288.215(7)(a).

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[1] See, e.g., Block, "Criteria in Public Sector Interest Disputes," Proceedings of the 24th Annual Meeting of the National Academy of Arbitrators 161, 171 (1972).

Turning ultimately to the ability to pay issue, interest arbitrators in making such a determination generally examine, inter alia, historical evidence of revenue trends, program reductions and layoffs; and often find such evidence instructive in that area.[2] These arbitrators hold that employers normally must show that vital programs are clearly threatened by the proposed increase in wages at issue before them.[3] Interest arbitrators also examine whether repairs and capital improvements and equipment have been given priority over, or have suffered in relation to, past and proposed wage increases.[4] Interest arbitrators additionally examine whether in the preparation of budgets an employer underestimates its revenues and overestimates its expenditures, as well as whether additional revenue levels or sources have become available since the budget was finalized.[5] Employers often find in such cases that their inability to pay arguments are not determinative where revenue and cost projections have proven to be less than fully accurate.[6]

Morever, interest arbitrators are likely in assessing ability to pay to order an employer to pay more in wages or benefits, even in difficult economic times, if an employer has not taken advantage of available taxing opportunities, and particularly so when that element is measured

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[2] Williams, et.al.: Ability to Pay - A Search for Definitions and Standards in Interest Arbitration, University of Oregon, Labor Research and Education Center, Monograph (1990).

[3] Ibid.

[4] Anderson and Krause, "Interest Arbitration in the Public Sector: Standards and Procedures" in Bornstein and Gosline, Eds., Labor and Employment Arbitration (Matthew Bender and Company, 1995), Page 63-10.

[5] Ibid.

[6] Krinsky, "Interest Arbitration and Ability to Pay," Proceedings of the 51st Annual Meeting of the National Academy of Arbitrators (BNA Books, 1998), Pages 204-08.

against comparable employers.[7]

In this situation, the evidence shows, inter alia, that: 1) beginning in fiscal 2009-10, property tax assessed valuation decreased for the next three years by a total of about 29%, and housing prices dropped over 50% causing significant downward pressure on the County's property tax revenues; 2) taxable sales decreased every year between fiscal 2007-08 and 2009-10; 3) as of early 2012, more than 60% of Nevada homes are "underwater" (more mortgage debt than property value), causing additional downward pressure upon property tax receipts; 4) the Nevada unemployment rate through the first quarter of 2012 was 12.7% – the highest in the nation – and 11.4% in Reno, causing drags on taxable sales and the ability of homeowners to pay their mortgages; 5) the number of full time County employees has decreased 27% since 2008 from 8.1 to 5.8 employees in fiscal year 2011-12 per thousand population; and 6) in fiscal year 2011-12, there was no new funding set aside for capital improvements due to the difficult budget situation despite a long list of needed capital projects. It further shows that in September 2011, a then projected $16.8 million budgetary shortfall was subsequently balanced by the County via: 1) a hard hiring freeze on about 140 vacant positions that was put into place in early 2012, and that because those positions were not filled, the County saved $5.5 million which assisted in balancing the fiscal 2011-12 budget; 2) wage concessions agreed to during that time involving other County bargaining units and non-represented employees saved the County an additional $3.5 million; and 3) decreasing County department budgets by $6.3 million, reducing OPEB funding by $3.3 million, and decreasing capital and contingency funding by $3.5 million. These elements, standing alone, appear to favor the County's position that it does not have the ability to fund the final offer of the Associations here.

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[7] Krinsky, supra, Note 6; Williams, supra, Note 2.

However, although the parties disagree at least to some degree on virtually every element of the fiscal 2011-12 and 2012-13 budgets, certain elements of those budgets clearly stand out as evidence that the County can afford to pay the final offer of the Associations. First among those areas is the budget end fund balance carried over from fiscal 2011-12 to fiscal 2012-13 of $35,260,611 – an amount $4.16 million more than the amount of end fund balance contained in the County's "Estimate to Complete" budgetary numbers and thus the fiscal 2011-12 actual end fund balance. That amount was brought forward to become the beginning balance for the 2012-13 fiscal year. Even if as the County claims that figure does not include $2.15 million for outstanding purchase orders rolled over between budget years, the remaining $2.01 million – a fiscal 2012-13 opening balance not "required by law to be carried forward to the succeeding fiscal year in any designated amount" under NRS Section 288.200(10) – is an "available resource" under Nevada Administrative Code Section 354.410 and NRS Section 288.200(7)(a), and is available to fund the $1.285 million cost of the Associations' final offer for that 2012-13 fiscal year,

Second, the evidence further shows that the County historically overbudgets dollars over actual amounts expended, even where the County's testimony, that the large 2008 and 2009 differences were a "result of planning for the sustained and systematic downturn that we are seeing in the economy" is credited here by the arbitrator. The evidence in this area shows that in subsequent years up through fiscal year 2011-12 – during the height of the recession and the period coming out of it – County expenditures were overbudgeted by an average of 4.67%. Such averages provide additional support for the existence and availability of dollars for salary increases contained in the fiscal 2011-12 end fund balance / fiscal 2012-13 beginning fund balance of a minimum of $2.01 million.

Third, the May 18, 2012 e-mail to County employees from County Manager Simon clearly provides an indication that the County has, according to Simon, "turned the corner, and the worst

is behind us." That e-mail, inter alia, indicates according to Simon that: 1) "the County still maintains the highest bond rating in the history of Northern Nevada;" 2) the County's ending fund balance for fiscal 2011-12 is "200% of what is required by statute;" 3) the County expects to receive $6 million over two years from the State of Nevada "which will go towards limiting health insurance premiums and possibly hiring additional deputies;" 4) the County has fully funded the Incline Village Tax refunds and still maintains "...millions of dollars in assigned reserves for risk management, equipment replacement, health benefits and other designated purposes;" and 5) "unlike many local governments in Nevada, the County will be transferring almost $19 million into the trust that has been established for long-term liability for retiree health benefits." With regard to the last of those statements, there is no indication that the nearly $19 million referenced therein came from some sort of restricted fund, and it is thus likely that such a large transfer amount came from funds that could have otherwise been available for employee wages. Irrespective of that source, however, the elements of that e-mail – and specifically the well above required end fund balance percentage – indicate that the County has the ability to pay the Associations' wage demand, and County assertions to the contrary are largely countered in that e-mail by the chief operating officer of the County. Moreover, there is no specific requirement for the County to fund any of the OPEB retiree health benefits – although doing so at some level is certainly a prudent financial action.

Fourth, while it is true that the County has spent less than $3 million toward capital improvements in both fiscal year 2011-12 and 2010-11, the capital improvement fund as of March 2012 maintains a balance of over $16 million. Although these funds are not available for wage increases, the County given that fund balance certainly has the ability to spend more on capital improvements and equipment if it so chooses, and neither that fund nor the low level of expenditures in it have any impact upon the County's ability to fund the Associations' final offer.

Fifth, by the County's own data, the Consolidated Tax for fiscal year 2011-12 was 2.56% or $1,612,253 above that amount for fiscal year 2010-11. That Consolidated Tax amount is expected to increase by the County's data by a minimum of $920,736 in fiscal year 2012-13. Although the County properly cites that such a Consolidated Tax increase is at least partially offset by continuing property assessed valuation decreases and thus lesser property tax, that $1,612,253 amount is sufficient in and of itself to fund the Associations' final offer here.

Finally in this ability to pay area, the County has the option of implementing a Government Services Tax of one cent per each dollar of valuation of certain vehicles based in the County – a tax that if enacted would by the County's data generate revenues of approximately $8 million per year to be deposited into the County General Fund. The Board of County Commissioners has on more than one occasion refused to implement such a tax. Although the arbitrator recognizes the difficulties in enacting even such a minor tax as this in the current County economic circumstances, arbitrators have held that ability to pay arguments are far less likely to prevail absent a showing that the raising of additional revenues via a new tax such as this involves greater difficulties than merely making an unpleasant political decision.[8]

Turning finally in this area to NRS Section 288.200(7)(a) and Section 288.215(7)(a) requirement for the arbitrator to give "due regard to the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety to the people residing in the political subdivision," as set forth above it is my considered judgment that the County, having the burden of proof here, has not met its burden of showing that a finding of the County's ability to pay in this case constitutes the absence by the arbitrator of such "due regard." In addition, such an ability to pay finding, in conjunction with the arbitrator's findings in the comparability area and other "normal criteria for interest disputes," infra, will allow the Department to better compete with

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[8] Krinsky, supra, Note 6, at Page 206.

comparable nearby employers for the best of the candidates for law enforcement positions, will provide at least some relief for the recruiting and retention problems addressed, infra, by Sheriff Haley, and will likely improve morale within the Department. Moreover, as set forth above, an award in favor of the Associations will have no effect upon the provision of facilities under that statutory language, in that the County currently has the funds to at minimum increase its facilities and equipment purchases, if it has the political will to do so.

COMPARABILITY

In view of the above, I find that the County has the financial ability based on all existing available revenues to pay for the final offer of the Associations, and that such a finding is made "with due regard for the obligation of the (County) to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the (County)" under NRS Section 288.200(7)(a) and 288.215(7)(a). I further find that the strength of the above-cited ability to pay elements overcomes the earlier-cited largely external factors that support the County's claimed inability to pay – and particularly so given the County's burden of showing here the existence of an inability to pay the Associations' final offer.

In view of the arbitrator's above finding that the County has the current financial ability to grant monetary benefits, the arbitrator turns next to the provision of NRS Section 288.200(7)(b). That provision in pertinent part provides that the arbitrator "...shall consider, to the extent appropriate, compensation of other government employees, both in and out of the State, and use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the positions of each party." Although that statutory language appears to require examination by the arbitrator of "normal criteria for interest disputes," it is clear to the arbitrator that both internal and external comparability – one of such "normal criteria" – is the most important such criterion to be considered by the arbitrator after the

ability to pay criterion, since it is the only such "normal criteria" specifically set forth within the statute.

POSITIONS OF THE PARTIES ON COMPARABILITY

THE ASSOCIATIONS

The Associations contend that the proper external comparability group for examination by the arbitrator under NRS Section 288.200(7)(b) consists of the law enforcement personnel in the Nevada cities of Reno and Sparks, and the Nevada city/county of jurisdictions of Carson City and Las Vegas Metro; that the data concerning pay and benefit amounts in those jurisdictions strongly supports its final offer, and that internal comparability data does not support the final offer of the County in this case. It supports those elements with the following arguments:

1. The Association's comparability group is the proper one for comparison purposes by the arbitrator in this situation. Both Sparks and Reno are city police departments immediately adjacent to the jurisdiction of the Department; employees move between those employers on a regular basis; employees in those jurisdictions regularly interact with Department employees in the field; and those two cities are among the twenty-two jurisdictions which utilize the only jail in the County which is operated by the Department.

2. The universe of comparable jurisdictions contained in the Associations' exhibits has been used by the parties for more than twenty years. Throughout the negotiations, the County never disagreed or for that matter agreed that the comparable jurisdictions were those set forth by the Associations, but the County also never provided any universe of claimed comparable jurisdictions, or any data supporting its proposals in terms of market comparability.

3. In addition to the identification of a twenty year history of comparable agencies, the Associations relied on "traditional items" of deputy and supervisor compensation in order to

calculate "total compensation." The evidence shows that prior to the circumstances involved here, the comparable agencies contained in the Associations' data and the component parts of the formula for total compensation had been traditionally accepted by both parties. There was no rebuttal testimony offered by the County to refute the longstanding practice and bargaining history relative to the use of the Associations' proposed comparable jurisdictions.

4. The Associations' data contained in its Exhibit #4 demonstrates a clear, concise and compelling case for market adjustment by way of the arbitrator's award of the Associations' final offer on wages here. The total compensation rankings identified in that exhibit demonstrate that County deputies are dead last in that group in terms of total compensation, and that deputies are 11.32% behind the average for these comparable jurisdictions. In addition, similar data for the SDSA-represented supervisors shows that sergeants in the County are 16.88% behind the average in that group. That data sets forth compelling evidence in support of the Associations' final offer.

5. The County produced a salary study for the first time at the hearing which had never been provided to the Associations. This exhibit does not reflect any custom or practice, or an accepted set of comparability rules. In fact, the County did not produce anyone who could testify as to the authenticity of the figures or methodology used – in marked contrast to the data and testimony provided by the Associations.

6. The evidence further shows that Sheriff Haley – the actual and political leader of the Department – believes that the universe of comparable jurisdictions identified in the Associations' exhibits constitutes fair and reasonable comparison jurisdictions. He too indicated why all of those jurisdictions, including the propriety of wage and benefits scrutiny of Las Vegas Metro, are comparable to the County in these circumstances, when he testified that both the Department and Las Vegas Metro are full service law enforcement jurisdictions with large jails, that both this

jurisdiction and Las Vegas Metro operate under the same laws and requirements and serve a similar customer base, and that the Department and Las Vegas Metro are the two largest such law enforcement jurisdictions in Nevada. Such testimony provided by a management witness such as the Sheriff is compelling evidence of the appropriateness of the Associations' comparability group, and strongly supports the adoption of the Associations' final offer.

7. Although the County produced testimony from several witnesses as well as documentation to support the position that other County employees have made wage concessions to the County, that showing of internal compensation and benefits provided to such non-sworn County employees is irrelevant in evaluating the proper compensation for Association-represented deputies and supervisors pursuant to NRS Section 288.215. Contrary to the claims of such witnesses, the Associations and their members have in fact made significant concessions during the last three attempts to negotiate collective bargaining agreements with the County, including one where no wage increase was provided, another where concessions were agreed upon by the Associations, and a third which resulted in an arbitration award where concessions were awarded in favor of the County.

8. While it is certainly interesting to hear of the concessions made by other County employees, there was no evidence introduced by the County to suggest that there is any recruitment, retention or any structural competitive imbalance with the compensation provided to other County employees – in marked contrast to the Associations' evidence of such recruitment, retention and structural competitive imbalances shown in its comparability data. There was also no evidence introduced by the County to suggest that any other County employee suffers from the structural market deficiencies in compensation that sworn members of the Department have been forced to endure. There was likewise a complete dearth of testimony related to any scenario such as to the one identified by the Sheriff where the deputies were being recruited by other agencies

after being trained by the Department, and no evidence that any other County non-law enforcement employee has been recruited or solicited by competing agencies. Moreover, there was nothing in the record to suggest that compensation provided to other County employees suffers in comparison to any employee, public or private.

9. Although the County made an attempt to point to "concessions" agreed to by members of the Board of County Commissioners, the evidence showed that those members are entitled to longevity pay, and there was no concession concerning that premium pay by those members. It further showed that longevity represented 4% of their annual compensation, and although that in and of itself was not dramatic, it was shocking to hear that their longevity payment compounds annually with a maximum cap of 20%. This evidence calls into question the policy decisions made by the Board of County Commissioners, who have ignored serious compensation problems within the Department, yet have preserved a 20% longevity benefit for themselves.

THE COUNTY

The County argues under the statutory comparability criterion that internal comparisons with concessions agreed to by other County employees should be the major comparability data upon which the arbitrator should make his award; that in the external comparability area, the proper comparability group under NRS Section 288.200(7)(b) should be the Nevada law enforcement agencies in Reno, Sparks, Carson City, Douglas County and the State of Nevada Highway Patrol; and that the salary and benefit data for those Nevada employers supports the final offer of the County in these circumstances. The County supports its final offer under this statutory criterion with the following arguments:

1. The County, in better economic times, has routinely provided cost of living increases to all of its labor groups including the Deputies and Supervisors. The County's evidence shows that SDA Deputies have received increases in pay in the past as much as 7%, and that as recently

as 2004 and 2005 those employees received two increases. Similarly, the SDSA Supervisors received pay increases every year from 1982 to 2007 as much as 9%, and received two increases in 1982, 1984, 1988, 1992, 2004 and 2005.

2. The evidence further shows that County Deputies and Supervisors receive special pays provided only to those employees, including field training, physical fitness, special, detective, and hazard pay, as well as SWAT, DRT, hostage, assignment differential, weapons and uniform allowances, and mental health pays. The evidence clearly shows that these are not pay types received by other County employees.

3. The Associations' members also receive better pay in the area of longevity, sick leave payouts, early retirement, and heart and lung benefits than other County employees. While programs for the first three of those areas exist among other County employees, the benefits in those areas are significantly better for members of the Associations. In addition, the Associations' members receive benefits for future heart and lung ailments pursuant to Nevada law – a benefit unique to Nevada law enforcement personnel. That benefit was actuarially estimated at almost $35 million which the County is not funding because of budgetary shortfalls, but which is and will continue to be a large consuming liability.

4. Not only do Deputies and Supervisors already receive more and better pay than other County employees, they also seek pay raises at the expense of their fellow employees in this proceeding. The evidence shows that all other County labor organizations and non-union groups agreed to various concession levels which amounted to $4.3 million in concessions for fiscal 2012. The County achieved voluntary concessions from all employee groups other than the DSA and the SDSA during that time. The evidence further shows that those other organizations cited the same personal and financial pressures cited herein by the Associations, before agreeing to those concessions. There is no reason why these Associations should be excluded from their share of

the pain of wage concessions necessary to balance the County's budgets.

5. While there was no agreement at the hearing concerning which jurisdictions should be viewed as externally comparable, the parties in essence agreed that the appropriate comparable jurisdictions to the County included Reno, Carson City and Sparks, largely because these three entities are in the same geographical region, use the same recruitment pool, and provide backup and support to law enforcement functions for each other. The Nevada Highway Patrol is also appropriate for comparability purposes, since employees of that State agency interact with employees of the Department on a regular basis; and Douglas County should also be included as comparable both because that agency is geographically in the same area and because it provides similar services. Although the Associations asserted that Las Vegas Metro was also comparable despite its distance from the County, the evidence provided by the County showed that no Las Vegas entity is comparable because they are geographically separated from the County, the community served is much larger than the County, that agency has more employees and larger budgets than the County, and the Associations have not lost deputies to that entity. Las Vegas Metro shares neither geographic proximity nor a labor pool with the County. Additionally, the evidence shows that pay levels at Las Vegas Metro are vastly different from those of the County. For each of these reasons, all the Las Vegas agencies should be disregarded for the purposes of comparability.

6. In view of the non-comparability of those Southern Nevada jurisdictions, it is clear that the cited Northern Nevada entities are proper for comparison purposes. It should also be obvious that, regardless of whether the County's or the Associations' exhibits are used, Reno overpays its officers and skews the averages and percentages. Reno is therefore not appropriate for inclusion in the analysis of which proposal is the more reasonable. Excluding Reno from the analysis, the difference in pay between the Department and Sparks and Carson City is only 2.35%

for Deputies and only 1.01% for Supervisors. The data therefore shows that while Deputies and Supervisors are unquestionably underpaid in any comparison which includes Reno or Las Vegas, their pay is within an acceptable range of pay for those entities to which they are truly comparable in Northern Nevada.

7. While there was testimony concerning decreases of the number of Deputies employed at the Department, and the Sheriff testified that he has difficulties in recruiting good candidates in large part because new recruits will be required to work at the County's Detention Center for an extended period of time before moving to patrol work similar to comparable jurisdictions, the evidence provided by the County shows that only 39 sworn employees have left the Department and moved to other agencies, and that only ten went to Reno. That evidence further shows that the turnover rate among sworn employees in the Department is less than the overall turnover rate over the past ten years for the County as a whole. In such circumstances, it is clear that the Department is not losing an inordinate number of employees to Reno or Sparks, and does not have a significant retention problem.

8. The Associations' proposals have the potential to work a great injustice on employees of the County who have agreed to wage concessions. While the Associations claim to want only the status quo or to be made whole, in reality those employees stand to gain up to 10.5% increases over fellow employees. The Associations' final offer creates a risk of a windfall of another 3.125%, in that if the Associations are correct that the County is illegally withholding pay, they will be vindicated in the forum either of the EMRB or District Court, where they have filed complaints or lawsuits, and will get what they seek to achieve and be made whole through that system. If those employees are awarded the amount at issue here, that amount will be earned at the expense of other County employees and the citizens of the County.

DISCUSSION IN THE AREA OF COMPARABILITY

It is generally the function of the interest arbitrator in the statutory area of comparability to attempt to determine the wage and/or benefit rate that might have evolved from successful bargaining, had the parties acted like others similarly situated. There is no magic formula for wage adjudication, and the interest arbitrator's function, among other things, is to examine in the wage area the question of how bargainers in comparable jurisdictions have evaluated the wage influencing factors and determined based upon those factors what is equitable and just. While such qualitative decisions about work equivalency constitute an inherently subjective process based upon the evidence and argument of the parties to the proceeding, determinations based on such comparability data, if properly performed, provide a relatively precise and objective figure rather than an artificially contrived rate.[9]

In this situation, NRS Section 288.200(7)(b) concerning the area of comparability contains the requirement that the arbitrator "...shall consider, to the extent appropriate, compensation of other government employees, both in and out of the State, and use normal criteria for interest disputes...in assessing the reasonableness of the position of each party..." It is clear from such language reference to "other government employees" that the arbitrator is to examine the wages and benefit amounts of both internal (within the County) employees and external (outside) employees performing similar work in making his determination in this area.

A. INTERNAL COMPARABILITY

The parties strongly dispute in this situation the importance to be attached by the arbitrator to internal comparability. The County attaches extensive weight to this factor, arguing that employees represented by the Associations: 1) should accept wage cuts as all other represented County employees have done, and that these sworn law enforcement employees should not be

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[9] Anderson and Krause, supra, Note 4.

excluded from their share of the pain necessitated by the County's precarious financial position; 2) already receive additional types of pay not applicable or available to other County employees; 3) even where other County employees receive fringe benefits similar to those areas received by Association-represented employees, those Association-represented employees receive a higher benefit level in many of those benefits than do other represented County employees; 4) receive certain statutory benefits not available to other County employees; and 5) have received higher cumulative wage increases than other County employees over the last thirty years. In contrast, the Associations contend: 1) that they have also made significant wage concessions over the last three contract periods; and 2) that the County's internal comparability data is irrelevant here, both because, contrary to the Associations' data, none of those other County employees has been shown by the County to either suffer from the market deficiencies in compensation experienced by Department sworn personnel, or that they have been lured away from County employment by higher wages offered by County competitors, or that such employees suffer in wage levels by comparison to any other public or private employer.

The arbitrator cannot agree with the Associations that such internal comparability data is irrelevant, even when the above external elements are factored into this area. The statute clearly calls for arbitral examination of both internal and external comparability via its use of the phrase "other government employees." However, it is the arbitrator's considered judgment that, in these circumstances, external comparability is more pertinent to the arbitrator's "reasonableness" determination of the parties' final offers than is internal comparability. This is so for several reasons. First, comparability in the final analysis is largely market driven, and employees in none of the other County bargaining units directly compete for jobs with those in the Association-represented units – particularly in view of the rigorous selection and training processes utilized by the Department for its sworn employees. Second, the County's evidence in this area fails to show

that, unlike Association-represented law enforcement personnel, employees in other County bargaining units: 1) suffer from market deficiencies in compensation; and 2) have been lured away from County employment by higher wages provided by other employers, public or private. Third, while it is true that Association-represented employees receive certain additional types of pay not available to other County employees, virtually every one of those pay types involves work unique to law enforcement, and there was with limited exception no County showing that comparable external sworn employees do not also provide such benefits. Fourth, while Association-represented employees do receive a higher level of certain benefits also available to other County employees, it is apparent that such higher benefit levels were achieved by the Associations during the collective bargaining process, and that nothing prevented the County from at least attempting to maintain internally an equal level of such benefits among all County bargaining units. Fifth, the statutory final step of impasse procedures in Nevada for other County employees is not the same, and non-law enforcement County employees – who are apparently prohibited from utilizing the strike as an economic or political weapon – have virtually no choice once their bargaining with the County reaches impasse other than to accept the last, best offer of the County. Nevada law enforcement employees are also prohibited from exerting economic or political pressure via the strike mechanism, but instead are allowed absent voluntary agreement to invoke the interest arbitration impasse resolution step involved here – a process that statutorily requires examination of the wage and benefit levels of similarly-situated employees. Finally, the cumulative wage comparison of Association-represented employees and other County organized employees over the past thirty years presented by the County is of limited value, in that it does not reflect the choices made in bargaining by any of the parties involved regarding whether to apply available dollars to fringe benefits rather than wages in a particular set of contract negotiations.

In view of the above, I find that while internal comparability is relevant for examination by the arbitrator under NRS Section 288.200(b)(7), it is not as pertinent to the arbitrator's determination of the "most reasonable" final offer of the parties as is examination of external comparability which is discussed below.

B. EXTERNAL COMPARABILITY

Consistent with their arguments in this area set forth above, the parties agree only to the external comparability of nearby law enforcement jurisdictions of the City of Reno, the City of Sparks, and the City of Carson City – the last of which is a county-wide jurisdiction including that county's jail located in the county immediately to the south of the County involved in this case.

The County also argues that both Douglas County and the State of Nevada Highway Patrol should be included in the appropriate comparability group. It asserts that Nevada Highway Patrol officers often interact with bargaining unit personnel both at the County Jail and during patrol activities, and that Douglas County should be included in the proper comparability group because that county abuts the County to the southwest and likewise the County operates a county jail.

The Associations contend that in addition to the three agreed-upon law enforcement jurisdictions, the proper comparability group in these circumstances should also include the Las Vegas Metropolitan Police Department (hereinafter Las Vegas or Las Vegas Metro). It asserts that Las Vegas Metro is appropriate for comparison because, like the County, it is a full service law enforcement agency covering all of Clarke County with the exception of Henderson and North Las Vegas – similar to the exceptions of the cities of Reno and Sparks from the coverage of the County involved here; like the County its jail services all law enforcement jurisdictions in Clarke County; the two of them are the two largest law enforcement agencies in Nevada and both serve tourist and casino areas of Nevada; and both provide the same functions, are subject to the same statutory requirements, tax levels, and revenues; and perform comparable duties.

DISCUSSION OF EXTERNAL COMPARABILITY

In making determinations on the appropriate external comparability group, based upon evidence presented by the parties, interest arbitrators normally apply some or all of the following factors most commonly used to establish comparability:

1) nearby communities;
2) similar population size;
3) past practice;
4) extent of fire or crime problem;
5) parity (e.g., police and firefighters);
6) extent of recruitment and retention problem;
7) comparable ability to pay, demographic elements, taxes levied and received;
8) distinctive characteristics of the localities;
9) comparable duties; and
10) the peculiarities of the particular profession, including the hazards of employment, physical qualifications; educational qualifications, and job training and skills.[10]

In addition, most arbitrators will consider the union or non-union status of a proposed comparability group member, and generally will not include a non-union employer in an appropriate comparability group where the pertinent employees have no collective voice in the determination of their wage and benefits.[11]

In view of these comparability group elements, the arbitrator does not believe that Douglas County is properly comparable in these circumstances. It is only about one-tenth the size of the County in population, and it is comprised largely of homes and other residences bordering the resort area of Lake Tahoe on the Lake's east side. Even if its Sheriffs Department is a full service law enforcement agency including a county jail, the substantial size difference and the largely rural nature of that county that makes it unlikely that it has the crime problems which bear much similarity to those of the County.

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[10] Anderson and Krause, supra, Note 4, at Pages 63-7 and 63-8.

[11] See, e.g., City of Farmington 85 LA 460, 464 (Bognanno, 1985).

Likewise, although the Nevada Highway Patrol would likely be comparable if those employees had bargaining rights, such employees are not authorized under Nevada law even to negotiate with the State of Nevada. Those law enforcement employees are for that reason not appropriately comparable to Department sworn employees.

The major issue here concerning the appropriate comparability group is whether Las Vegas Metro should be included in the comparability group. While there are clearly reasons for and against such inclusion, the arbitrator finds it unnecessary to make that determination. This is so because whether Las Vegas Metro is or is not included in that group, the total current maximum compensation for County Deputies, even under the County's data, is still 3.68% below the average of that figure within that three member comparability group – a deficit percentage above the 3.125% final wage offer of the Associations. (Average comparability group maximum yearly compensation for deputies of $68,403 minus County maximum compensation $65,887 equal $2,516. $2516 divided by average comparability group maximum yearly compensation $68,403 equals 3.68%.) If Las Vegas Metro is included under the County's data, that differential in the County's data increases to 7.32% using the same methodology.

When the Associations' data is used for the top step Deputy compensation where Las Vegas Metro is not included in that comparison, the maximum monthly salary among comparable employers, plus longevity, education and uniform allowance included in County numbers, is $6,321 or 8.42% per month higher than the average maximum monthly salary for County Deputies. For Sergeants, when Las Vegas Metro is not included, the County is 10.8% below the average in that comparability group. When Las Vegas is included among comparable employers, the top step County Deputies represented by the Associations by the arbitrator's calculation are 10.17% below the comparability group average, and County top step Sergeants are 14.44% below the average. In all such Associations' calculations, the County ranks either last or second to last in maximum

top step income in the comparability groups, both for Deputies and for Sergeants. But for the addition of "physical maintenance" pay in the County's calculations for Deputies – a payment it alleges that none of the other comparability group members receive – the County is currently second to last in maximum compensation, leading only much smaller Carson City in that area by less than $400 per year. Higher percentage differentials exist under the Associations' data when comparisons are made in the Lieutenant and Captain classifications. The County did not provide comparability data for such bargaining unit supervisors.

When the Association's final offer of 3.125% is applied to those comparable employers, under the County's data the top step Deputy would still be $457 per year below the average in the County's comparability group for total compensation, but less than 1% below that average. Under the Associations' data for total monthly top step Deputy, when Las Vegas Metro is not included in the comparability group, the County would still be $354 per month or 5.6% below the total compensation average in that group after application of the Associations' final offer. When Las Vegas Metro is included in that group, the difference at that step when the Associations' final offer is applied is $474 per month – a figure still 7.36% below the average total compensation in that group.

At the top step Sergeants total compensation level, when the Associations' final offer is included but Las Vegas Metro is not in the comparability group, that classification remains 8.02% or $661 per month below the average in that group. In the same circumstances but where Las Vegas Metro is included in the comparability group, even with inclusion of the Associations' final offer, the County is still $1,012 per month or 11.77% below the average in total compensation in that group. Higher than the above percentage differences from the average would remain for Lieutenants and Captains even if the Associations' final offer is accepted by the arbitrator and included in those calculations.

With that 3.125% amount included, the top step Deputy total compensation level under the Associations' data would move Deputies up one ranking place from last place in the Associations' comparability group, to a position ahead of only Carson City, while Sergeants would remain at the next to last ranking level, irrespective of whether Las Vegas Metro is included in the comparability group under the Associations' data; but Deputies would remain 2nd ranked under the County's comparability data when that amount is added to the top step Deputy total compensation level.

In the event that the County's final offer of a 3.4% wage decrease is adopted by the arbitrator, the existing competitive disadvantage for Association-represented employees would worsen at every level, irrespective of whose data is used and whether Las Vegas Metro is included in the appropriate comparability group. Under the County's data, the maximum Deputy average compensation figure, including the County's 3.4% wage decrease proposal, would lessen such Deputy pay from $66,887 to $64,345 per year, a $2,542 yearly compensation decrease, to a figure $3,601 per year or 5.3% below the maximum compensation level under the County's comparability data. That maximum average compensation amount would result in the loss in rank of a relative comparability group placement to Sparks, dropping Association-represented Deputies from second to third in that group under the County's data. Under the Associations' data for maximum monthly top step compensation, that County-proposed figure would decrease for Sergeants pay, when Las Vegas Metro is not included, from $5,786 per month to $5,581 per month – a figure $732 per month or 11.5% below the average in that group. When Las Vegas Metro is included, the pay amount for Sergeants is 13.23% below the average in that group. When that 3.4% salary decrease is applied to top step Sergeant's compensation under the Associations' data, that decreased amount is $251 per month and $3,012 per year less than the top step average Sergeants compensation when Las Vegas is not included, or 13.9% below the average in that comparability group. When Las Vegas is included among the comparables for top step Sergeant

compensation and the 3.4% decrease per month is factored in, Sergeant's top step compensation is 18.1% below the average in that group. Similar substantially below average comparability dollar amounts and percentages exist for bargaining unit Lieutenants and Captains, with some of those amounts passing the 20% deficit to average amounts, at minimum at the level of Captain. Moreover, total compensation relative ranking under the County's proposal would decrease to last place for Sergeants in each of the Associations' comparability groups; and remain in last place and fall even further behind fourth ranked Sparks in total Deputy compensation under the Associations' data. Even under the County's data if the County's final offer is chosen, Deputies' top step total compensation ranking would fall from second to last in the County's four member comparability group, behind Carson City by about $117 per year.

In view of all of the numbers, percentages and rankings, both currently and after application of both parties' final offers, there is simply no other way for the arbitrator to say this except to state that the external comparability data, when the County's 3.4% wage decrease is applied to this data, provides absolutely no support for the final offer of the County, irrespective of the differences in the data between that of the County and the Associations, and irrespective of whether Las Vegas Metro is or is not included in the appropriate comparability group. Moreover, it is my view that given the magnitude of these differentials when the County's final offer is applied, it is my considered judgment that such definitive data easily overcomes the impact of the internal comparability data showing that other County bargaining units have agreed to wage concessions.[12]

The County argues that such external comparability data should not be relied upon by the arbitrator, in that Reno "overpays" its law enforcement personnel and thus "skews" the data. The

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[12] At least one interest arbitrator has held that, even where there is a well-established internal wage pattern within a public employer, that internal pattern will not prevail if it "...results in an unacceptable wage level relationship between the unit at bar and its external comparables." City of West Bend 100 LA 1118, 1121 (Vernon, 1993). This arbitrator agrees with that general statement.

arbitrator cannot agree. On one hand, the County argues that Reno is comparable, and then on the other claims that the arbitrator should not consider it because the salaries it pays are too high. Indeed, the County admitted in its brief that if Reno was included in the comparability group, Association-represented employees were "unquestionably underpaid."

The County simply cannot have it both ways. Reno is an adjacent city which is surrounded by the County and the comparable City of Sparks, and the entirety of it is included within the County. Such an argument is an obvious attempt to get the arbitrator to ignore a clearly comparable geographically adjacent employer whose law enforcement personnel regularly interact with bargaining unit employees. The arbitrator refuses to do so.

Nor does the County's argument, that potential new deputies do not want to come to work for the County because they will be required to initially spend substantial time in the detention function rather than going immediately to patrol as new deputies do in Reno and Sparks, to support the County's external comparability position here. Even if that is the case, such an element cries out for a higher than current wage and benefit rate to entice competent, qualified and educated new recruits to the County – a rate at least arguably needed to overcome any negative perception of the initial County requirement for significant deputy time spent in detention.

In addition, even if as the County asserts comparable employers negotiate wage concessions from their sworn law enforcement personnel during the next round of bargaining at those comparable employers, such comparability group decreases will almost certainly still result in the County being behind the average in all or nearly all one of the comparability benchmarks discussed above, in view of how far behind those benchmarks the County is currently.

The testimony of witnesses at the hearing was also in conflict over whether the Department had a recruitment and retention problem, due to relatively low salaries and benefits, with the parties presenting conflicting data in this area. In such circumstances, the arbitrator credits the testimony

of highly respected Department Sheriff Michael Haley, the actual and political head of the Department who testified as a witness for the Associations. His testimony in this area in essence was that for a long time period, the County's sworn officer wage and benefit package has ranked last or nearly last among nearby similarly-situated Northern Nevada employers, that the offered wage and benefit package is a significant recruiting element for the County, and that higher paying nearby law enforcement employers recruit and employ attendees and graduates of the County's Law Enforcement Academy based upon the significantly higher wage and benefits they can offer such candidates, thereby employing persons trained at the expense of the County. In view of the Sheriff's testimony, it is apparent that the County's relatively low wages and benefits result in a significant recruitment and retention problem for the County. That external comparability element also favors the "reasonableness" of the Associations' final offer.

The above most common comparability determination standards used by arbitrators to establish wages and benefits also include the parties' past practice in the area of comparability. The evidence in this area shows that while there may have been no past explicit agreement to utilize the Associations' proposed comparability group including Las Vegas Metro, that comparability group has been used by the parties over an extended past period, beginning with a factfinder's determination in 1979 that this group was proper for comparability purposes. There was no similar past practice showing made by the County concerning its proposed comparability group, or any other such group. That comparability factor also supports both the comparability group proposed by the Associations and the "reasonableness" of the Associations' final offer.

Based upon the entire above, I find that the statutory comparability factor provides very strong support for the "reasonableness" of the Associations' final offer when compared to that of the County. I further find that the strength of the external comparability data easily overcomes the impact on this finding of the County-presented internal comparability data.

OTHER "NORMAL CRITERIA FOR INTEREST DISPUTES"

The arbitrator, upon review of the provisions of NRS Section 288.200(7)(a) concerning "Criteria for Recommendations and Awards," and NRS Section 288.215(7)(b) concerning "Content of Decision," is unsure whether he is also required to "use normal criteria for interest disputes," in addition to ability to pay and comparability, in making his determination of the "most reasonable final offer "under Section 288.200(7)(b), or is to examine only those two elements of ability to pay and comparability, as appears to be the requirement set forth in NRS Section 288.215(7)(b). Because NRS Section 288.215(10) appears to require the arbitrator in this area to base his decision on "the criteria provided in NRS Section 288.200," the arbitrator now addresses, to the degree to which they were contained in the evidence, other "normal criteria for interest disputes."

Among the other criteria "normally used" in interest disputes are: 1) the interest and welfare of the public; 2) the cost of living; 3) the stipulations of the parties; and 4) whether a "pattern" of bargaining, particularly in the wage area, exists between the employer and its bargaining groups.

With regard to the first of the above elements, NRS Section 288.200(7)(a) requires, as an element of the arbitrator's determination concerning the County's ability to pay, that the arbitrator exercise "...due regard for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing in the political subdivision." This subject area has been addressed in the Ability to Pay portion of this Decision, and does not require repeating under this other "normal criteria" section.

The County also argues in this area that adoption of the Associations' final offer will negatively impact public service to the community. However, the County as found above can finance the "most reasonable" final offer of the Associations here by, inter alia, utilizing either dollars from the larger than expected carried over fiscal 2012-13 beginning fund balance, or from higher than anticipated Consolidated Tax revenues for that fiscal year. Utilization of such funding

sources, given the clear availability of those funds and their unanticipated nature, will not require County budget cuts in other areas. This Award will, therefore, not negatively impact existing public service to the community. Instead, it can legitimately be argued that such award will improve public service, due to the anticipated positive impact upon the morale of sworn Department employees and the fact that it allows the Department to better compete for high quality potential employees.

With regard to the "other normal criterion" subject of cost of living, it appears that neither party submitted any data concerning this potential interest arbitration criterion used in statutes in numerous other states. This factor, therefore, has no influence upon the arbitrator's determination of the "most reasonable" of the final offers before him.

Turning next to the "normal criterion" of "stipulations of the parties," the stipulations reached by the parties in this matter are set forth on Pages 5 and 6, infra. In my judgment, those stipulations have no bearing upon the arbitrator's determination of the "most reasonable" of the final offers before him.

Next in the area of "pattern bargaining," the evidence shows that: 1) the employee associations bargaining with the County have not necessarily agreed to identical wage increases (or decreases) within a particular year; 2) those groups have achieved differing cumulative total wage percentage increases since 1982; and 3) even where wage concessions occurred in recent bargaining, their amount and duration varied among those bargaining units.

Additionally, although an argument can be made that this Award will negatively impact upon the morale of other County employees, because their bargaining representatives agreed to wage concessions while County sworn personnel will receive the relatively small wage increase found appropriate here, this arbitrator has considered in this Decision, as he is required to do under the statute, both internal and external comparability, and has shown a significant basis for his

sources, given the clear availability of those funds and their unanticipated nature, will not require County budget cuts in other areas. This Award will, therefore, not negatively impact existing public service to the community. Instead, it can legitimately be argued that such award will improve public service, due to the anticipated positive impact upon the morale of sworn Department employees and the fact that it allows the Department to better compete for high quality potential employees.

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Additionally, although an argument can be made that this Award will negatively impact upon the morale of other County employees, because their bargaining representatives agreed to wage concessions while County sworn personnel will receive the relatively small wage increase found appropriate here, this arbitrator has considered in this Decision, as he is required to do under the statute, both internal and external comparability, and has shown a significant basis for his

determination that external comparability must be weighted stronger under those statutory elements than internal comparability.

It is apparent that true "pattern bargaining" does not exist in this situation, and therefore technically this "normal criterion" has no effect on the arbitrator's determination of the "most reasonable" final offer. However, to the degree that all other County bargaining units except those represented by the Associations agreed to wage concessions during their last round of bargaining with the County, this element to a limited degree favors the final offer of the County.

In view of these findings concerning other "normal criteria" for interest disputes as set forth in NRS Section 288.200(7)(b), the arbitrator finds that, when reviewed as a whole as described above, such "other criteria" support the final offers of neither party in the arbitrator's determination of the "most reasonable" final offer.

THE "MOST REASONABLE" FINAL OFFER

In view of the above findings of the arbitrator, and particularly given the overwhelming nature of the reasonableness of the Associations' final offer in the area of comparability based upon the factual findings on Pages 41 through 50 of this Award, infra, as required in NRS Section 288.215(11)(a), I find, pursuant to NRS Section 288.200(7)(b), that the Associations' final offer of a 3.125% across the board wage increase for employees in both the DSA and the SDSA bargaining units, effective on July 1, 2012, is the "most reasonable" of the final offers before me. As required by NRS Section 288.215(11)(b), the arbitrator's estimation of the cost of that Award pursuant to the parties' agreement is $1,285,544. In addition, because the final offers of the parties do not involve any contract provision impacting fiscal year 2011-12, the "current year being negotiated" under NRS Section 288.200(7)(c) is the 2012-13 fiscal year, since the costs involved in this Award affect only that fiscal year rather than both fiscal years 2011-12 and 2012-13.

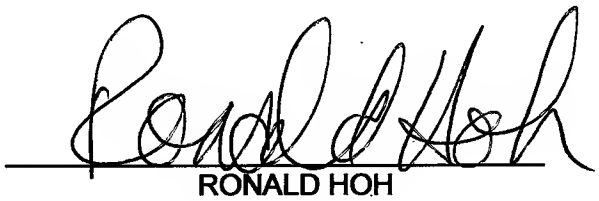
Finally, the arbitrator believes it appropriate to address the potential "windfall" in additional wage increases that may occur for Association-represented employees as the result of a lawsuit and/or an EMRB complaint filed by the Associations. Since the Associations have achieved herein the 3.125% wage increase sought in each of those actions, the arbitrator recommends that the Associations withdraw both of those lawsuits/complaints in this area. The arbitrator recognizes, however, that he has no authority to compel those actions in this case.

AWARD

1. The County has "the current financial ability to grant," ...i.e., the ability to pay for, the monetary benefits contained in the Associations' final offer, and such a finding is consistent with the requirements contained in NRS Sections 288.200(7)(a) and 288.215(7)(a).

2. The Associations' final offer of a 3.125% across the board wage increase for employees represented by both Associations, effective July 1, 2012, is the most reasonable of the final offers before the arbitrator under NRS Section 288.200(7)(b), and is hereby awarded.

September 17, 2012



RONALD HOH
Arbitrator